



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Victim Personal Statements: Formalisation

7 November 2013

NORTHERN IRELAND ASSEMBLY

Committee for Justice

Victim Personal Statements: Formalisation

7 November 2013

Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Mr Raymond McCartney (Deputy Chairperson)
Mr Sydney Anderson
Mr Tom Elliott
Mr William Humphrey
Mr Seán Lynch
Mr Alban Maginness
Ms Rosaleen McCorley

Witnesses:

Ms Maura Campbell	Department of Justice
Ms Veronica Holland	Department of Justice
Superintendent Paula Hilman	Police Service of Northern Ireland
Mr Stephen Herron	Public Prosecution Service

The Chairperson: I welcome Ms Maura Campbell and Ms Veronica Holland from the criminal justice division of the Department of Justice (DOJ); Superintendent Paula Hilman from the PSNI; and Mr Stephen Herron, the senior assistant director in the Public Prosecution Service (PPS). I apologise that you had to wait; the previous session took a little longer than we anticipated. Nevertheless, we will continue to give justice to anyone who comes before us. I will hand over to Maura, who will take us through her briefing.

Ms Maura Campbell (Department of Justice): Thank you very much, Chairperson. Given the hour and the volume of other business that you need to get through this afternoon, I am happy to give you the abridged version of my opening comments, after which we can draw out any key points in discussion. We are grateful to the Committee for finding the time to listen to us today. We have given you a short paper that highlights the fact that the implementation of a new process for formalising the use of victim personal statements has been delayed. We thought it better to come in now and make you aware of that rather than waiting until we were due to give you a general update on implementation against the new victim and witness strategy.

We are disappointed not to have met our earlier target for making this improvement to victims' services. We felt that we were left with little option, given the legal advice that we received on the implications of some relevant case law in England and Wales and, in particular, a recent Court of Appeal judgement. Rather than getting into all the detail of that case law, I will concentrate on the core issue, which is whether a victim personal statement constitutes evidence. Initially, we regarded such statements as non-evidential, but the courts in England and Wales have taken the view that they are evidence. That was very much reinforced in the Court of Appeal judgement, as was the

contention that it should, therefore, be in proper form, meaning that it should be a formal witness statement. That had quite a significant impact on our plans and raised a number of substantial questions on issues such as who could complete the form; what information would have to be provided to victims before making such a statement; the need for them to be warned about the consequences of making a false statement; and the need to record their acceptance of that warning.

One option would have been to follow the approach that has been adopted in most parts of England and Wales, which is that the police administer the warning and write the statement on behalf of a victim. However, we had a concern that that would not be the best option for a victim or a good use of police time. We also thought that it risked causing confusion with the taking of other evidence for the purposes of the investigation and prosecution of the crime. Instead, we sought and obtained the agreement of Victim Support and the National Society for the Prevention of Cruelty to Children (NSPCC), with whom we work very closely in the delivery of victims' services, to assist victims to make statements. In light of the escalation of the status of the statement, we felt that a victim would need additional support. We think that that is a better approach because it allows the authentic voice of a victim to be heard.

Work is now in hand to put the new process in place. I am able to confirm today that we aim to have it in place before the end of December. When we come back in January, I hope to give you an overall update that will confirm that that is in place. In the interim, victims will still be able to make victim impact statements under current practice; that has not been removed.

I think that I speak for all of us at the table when I say that we are very committed to working collaboratively to resolve this issue. It has been frustrating for us that we have not been able to have it in place sooner, but there were good reasons for that. The commitment is also there to push forward all the other improvements to victim and witness services that were in the new strategy and highlighted in your inquiry report. I think that Stephen and Paula's attendance here today helps to provide evidence of that commitment.

In the interests of time, I am happy to leave it there and take questions.

The Chairperson: Thank you very much for that. I think that the new proposal that involves Victim Support and the NSPCC helping victims is good for those organisations, but they will inevitably ask, "What about resourcing to make sure that we are able to do this?" What thought has the Department given to making sure that there will be proper resourcing for those organisations?

Ms M Campbell: Needless to say, those organisations raised that issue with us, and we have had discussions with them about resourcing. We are satisfied, and the organisations agree with us, that we can put this in place on the basis of some reprioritisation of the current resource available to them. We already provide quite substantial funding to both organisations for the delivery of existing services, although we have given them an undertaking that, if the uptake is higher than expected and starts to create a resource pressure, we would have to revisit the issue. However, for the moment, we are satisfied that, based on our expectation of uptake, we should be able to absorb that by a better use of existing resource.

The Chairperson: I am glad that we are pre-empting the organisations coming to us, and it seems that you have taken that into account. Is it hoped that it will come in at the end of December?

Ms M Campbell: Yes.

The Chairperson: Remind me again: on what cases will a victim impact statement be able to be made? Will it be at all levels?

Ms M Campbell: We have not put any restriction on the type of offence or victim. We asked about that in the consultation process because some jurisdictions limit it to serious offences only. We felt, however, that not only the nature of an offence but sometimes other factors, such as vulnerability, can have a considerable impact on a victim. We did not want to preclude cases in which there was a real need for a judge to be made aware, before sentencing, of the impact on a victim. We have left it that no offences are excluded. We understand from other jurisdictions that are as open as that that such statements tend to be used in more serious cases, so we do not expect a major increase in numbers. By better publicising the availability and the entitlement to make a statement, we hope that we will have some increase.

Mr McCartney: It is not clear, but what was the impact of the Court of Appeal decision on the overall case?

Ms M Campbell: Some existing case law in England and Wales that had come to our attention talked about a statement being in "proper form". It was not entirely clear from that, and we took legal advice. There was a certain greyness as to whether that meant that the statement had to be treated as evidential. However, the Court of Appeal judgement stated clearly that it was talking about such statements having evidential status, which made it clear to us that we could not proceed simply on the basis of what we had originally planned to do.

Mr McCartney: If a victim impact statement is considered as evidence, is there a possibility of the person who made it being asked to explain it?

Mr Stephen Herron (Public Prosecution Service): Maura, if you do not mind, I can answer that.

Ms M Campbell: Yes, sure.

Mr Herron: Yes, that potential exists. That is one reason why we thought that the more robust approach would be to make sure that it was in proper evidential format. I consider it unlikely that victims who make statements would be cross-examined on them. However, that could have happened in the Court of Appeal case that Maura mentioned. The victim made a statement after sentence and before appeal, which the defence alleged was contradictory and inconsistent. So it could happen, which is one reason why, at the time of making a statement, victims have to be aware that what they are saying is the truth, that the statement will be given to the defence and that they may end up giving evidence on it. Hopefully, that would be very unlikely.

Ms M Campbell: At the moment, even on the basis of our ad hoc arrangement, I think that it is the case that victims could be cross-examined on their statement. That does not seem to happen in practice although, technically, it could. Under a more formalised process, I think that there is slightly more of a chance of it happening in future. I agree with Stephen: it is probably unlikely that the defence would, in many circumstances, seek to do that.

Mr McCartney: That is a fair observation, but you cannot predict it. Normally, people who make statements are comforted by the fact that it is their personal testimony, and they feel that it is almost unchallengeable. That is not to say that people do not make sure that it is proper and so on, but is there a possibility that people may be put off? If they have not been cross-examined to date, they are putting themselves in a position in which, honestly and fairly, there is a possibility that, once they make a statement, they could be subject to cross-examination. Someone has been deemed guilty of a crime, but victims might have to justify how they feel. I can see a wee area in which people might say that it is not worth the hassle.

Superintendent Paula Hilman (Police Service of Northern Ireland): I totally understand your point. Given that there is no formality around the current system, that is the case at present. People are not aware of that or the fact that it can be referred to in open court. It is important that, before people make a statement, they are aware of what may happen. We will do that in training Victim Support staff, who will take the statement. The PSNI is creating a training course for Victim Support on all the legal aspects that they will need to cover with victims before an impact statement is taken. It will use the appropriate skills that it has, so Victim Support is the right organisation to take that statement. It is the case that that can happen at the minute. Is that right, Stephen?

Mr Herron: Yes, but it would be very unlikely.

Mr McCartney: That is what I am saying. It has not happened, so a layperson looking at it from a distance would say that it is an excellent idea that a victim gets that opportunity. In our inquiry, a lot of victims felt that they were outside the system and that making a statement gave them their day in the sun.

Mr Herron: Some victims may have already made a statement as part of the evidence enquiry.

Mr McCartney: That is my point. If you make an impact statement now, you might have to go back into the dock. A lot of victims say, quite rightly, that, when they go into the dock, it is very rigorous. Some would say that it is almost worse than the actual crime that they are talking about. I have a

concern that, by law, you would have to stand over your statement. Perhaps we need to examine the impact of that.

Mr Herron: The judiciary made the point that it is important that witnesses know what could happen with what they say. We are not saying that they would not tell the truth about the impact that a crime has had on them. One advantage of the system that we will end up with, as opposed to the system in England and Wales, is that police officers in England and Wales take that statement, sometimes at the same time as the evidential statement, which is not the best time to do it. Research shows that, at that stage, witnesses are traumatised enough without having to relive the events and put them down on paper or go through an interview. By allowing the professionals in the NSPCC and Victim Support to do that at a much later stage, it might comfort a witness. Although there is the potential for being called, that would be very rare if at all.

Mr McCartney: You can imagine people being in a position in which they are asked whether they are exaggerating their pain to ensure that a person gets a heavier sentence. If one person is asked that, the next person might ask whether it is worth it. You might lose valuable material. That is why I asked about the Court of Appeal judgement. Was the person's conviction overturned?

Mr Herron: No, it was not overturned in that case. It would be very rare for a court to allow a defence to question along the lines of a victim exaggerating. It would be more to do with their feeling that there was an inconsistency that may affect the safety of the conviction. That would be fairly rare.

Mr A Maginness: I share Mr McCartney's view that it could be off-putting to a victim of a crime. We need to be very careful about that. The whole purpose is to allow victims to express their feelings and concern about the crime and what happened to them. I do not share your view that, ordinarily, a statement would simply be handed into court and not necessarily be given by victims themselves. We are at an early stage, and it could be that, if such a statement were to be treated as evidence, the best way to exclude that evidence would be to insist that a victim goes into the witness box and gives evidence. Of course, the victim is, in those circumstances, a vulnerable person and may not want to give evidence, which would be a good way to prevent victims expressing their views in court.

Mr Herron: Can I —

Mr A Maginness: Just hear me out. That is the difficulty that is created if such a statement is regarded as evidence, which the Court of Appeal obviously has determined and which our courts are likely to insist on as well.

Ms M Campbell: I think that that is equally the case with current practice. The fact that there has been that ruling in the Court of Appeal means that statements are now considered as evidence.

Mr Herron: Statements should be an evidential format, but they will not be recorded until after conviction. Therefore, they will not be before a court prior to that. The only statement, if the victim has made one —

Mr A Maginness: I appreciate that it would be after conviction. However, if you were trying, as it were, to reduce the impact of a defendant's sentence and did not like the content of a report or a victim's statement, you could insist on that statement being rehearsed by way of evidence in the court. In certain situations, victims might not want to give that evidence. Therefore, that evidence, which could change the sentence, would not be presented to the court.

Mr Herron: We have had that in an informal setting for some time. It is usually by way of a letter or an informal statement, with no certificate such as police statements would contain. There have not been many challenges. There have been occasions when the defence has asked for it to be redacted before it is put in front of a judge, and that has to be by agreement. The prosecuting counsel would look at it and ensure that it did not impinge unduly on the impact that it was meant to have on a sentence. It is still a possibility. I will not say that it will not happen at all, but we would hope that it would not increase significantly simply because we have this new formal procedure for getting statements before a court.

Mr A Maginness: I think that there are problems, and we have not seen the end of the issue. It is a developing process that may give rise to future difficulties.

Mr Lynch: Maura, you looked at the system in the South of Ireland where, I believe, a victim has a right to an impact statement, or does it depend on the judge? It is an important aspect of the judicial system in the South of Ireland. What would be the difference with the system that you are proposing?

Ms M Campbell: The Republic of Ireland has a system that is similar to the current system in Northern Ireland, whereby a statement is prepared by a victim. I think that it is prepared by a victim with the Garda Síochána, which then sends it through the prosecutor to the court. I do not think that there is any legal entitlement in the South at present, and it is a fairly informal ad hoc procedure. I do not think that there is quite the same process.

Ms Veronica Holland (Department of Justice): Another difference in the Republic of Ireland is that it is limited to more serious offences: I think that it is sexual offences and murder/manslaughter. The scheme down there operates at the higher level. I am not sure, but the Republic of Ireland may be considering looking at that as part of the European directive. However, certainly at the moment, there are limitations with its application.

The Chairperson: Are members happy enough with the revised proposals?

Members indicated assent.

The Chairperson: Thank you very much for coming to the Committee to brief us.